



DEPARTMENT OF STATE
WASHINGTON

May 30, 1961

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MEMORANDUM FOR MR. McGEORGE BUNDY
THE WHITE HOUSE

Subject: Transmitting Further Materials on
Germany and Berlin

With reference to the telephone conversation today between Mr. Bromley Smith and Mr. Hillenbrand, there are enclosed the following items supplementary to those sent to you yesterday relating to Germany and Berlin:

- 1) Paper entitled "The Essential Difference Between a Soviet-East German Peace Treaty and the Existing Arrangements Between the Three Western Powers with the Federal Republic".
- 2) Paper on the Western proposals made at the Geneva Conference of Foreign Ministers (May - August 1959), together with collection of Geneva Conference documents to which reference is made in paper.

William R. Battle
L. D. Battle
Executive Secretary

Enclosures:

As stated above.

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[Declassified upon
removal of classified
attachments. 11/12/76
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The Essential Difference Between a Soviet-East German Peace Treaty and the Existing Arrangements Between the Three Western Powers with the Federal Republic

The relations between the Federal Republic of Germany and the Three Western Powers are governed by the provisions of the Convention on Relations of 1954. Under its terms the Federal Republic was given the full authority of a sovereign state over its internal and external affairs. However, by a very significant exception, the Three Powers retained for themselves their pre-existing rights and responsibilities as to two subjects, first as to Berlin and secondly, to Germany as a whole, including the reunification of Germany and a peace settlement.

In September 1955, the Soviet Union concluded arrangements with the so-called German Democratic Republic under which it purported to give sovereignty to it. The Soviet Union specifically excepted from the exercise of East German sovereignty, control over the movement between the Federal Republic and Berlin of military personnel and freight of garrisons of the Three Powers in West Berlin. This control was to be exercised "temporarily" by Soviet military forces in Germany. If the Soviets were now to conclude a peace treaty with East Germany, it is this exception which would disappear. The processing of Allied military traffic would be handed over to the East German regime.

On the Western side, we have carefully preserved both the appearance and the fact of our responsibility for Germany as a whole vis-a-vis the Soviets. It is with the Three Powers that the Soviets deal as concerns matters affecting the Soviet Military Liaison Missions in Germany, which are there by arrangement between the Three Powers and the Soviets. Soviet overflights of the Federal Republic are likewise the exclusive concern of the Three Powers. There is, of course, on the Western side, no exclave in the Federal Republic to which we owe the Soviets access, as the Soviets owe us as to Berlin. But we have not and will not enter into a definitive peace settlement with the Federal Republic purporting to destroy the Soviet right to have a voice in a settlement for all of Germany. The peace treaty with which the Soviets threaten us would purport to destroy our right to participate in the final settlement of the German question. Most importantly, however, considering the large measure of nominal sovereignty which the Soviets have given the East Germans, the major purpose of the peace treaty would be to eliminate the processing by the Soviets of Western military access to Berlin, thereby precipitating a crisis over Berlin.

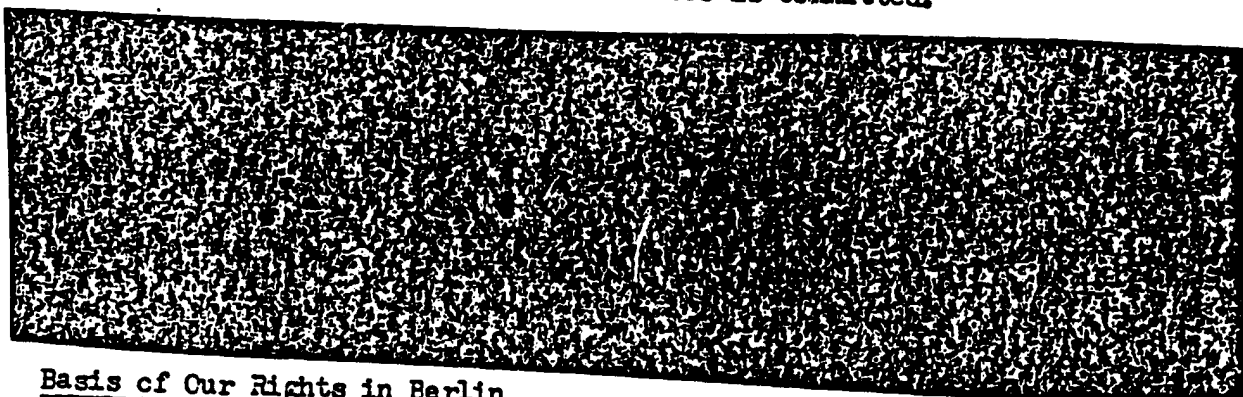
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Dept. of State (NLK-78-633)	
By <u>FWH</u>	NARS, Date <u>1/31/81</u>

~~SECRET~~THE UNITED STATES POSITION ON BERLINImportance of Berlin

Whatever may be said of the historical developments which led to United States commitment to Berlin, the present importance of the city for our foreign policy can scarcely be exaggerated. Since 1948 we have, by our own choice, made Berlin the example and the symbol of our determination and our ability to defend the free parts of the world against Communist aggression. We have frequently reiterated our "guarantee" that we shall treat any attack against Berlin from any quarter as an attack upon our forces and upon ourselves. (The background paper D/16 "Excerpts from Allied Statements Regarding Western Protection of Berlin", included in the papers prepared for the Vienna meeting, contains a representative assortment of statements made by United States spokesmen.) We have recently given our commitment a more extended, though admittedly more nebulous significance, by using such language as not abandoning the free people of Berlin or of not tolerating the unilateral infringement of their rights. The United Kingdom and France have joined us in the basic "Berlin guarantee" and the other NATO powers have associated themselves with it, but it is generally regarded as being meaningful only to the extent that the United States is committed.

Basis of Our Rights in Berlin

The rights of the Western Powers in Berlin are based on the military defeat of Nazi Germany. The United States, the United Kingdom and the Soviet Union as part of the complex of arrangements for the postwar administration of Germany, entered into an agreement for zones of occupation in Germany and for the administration of greater Berlin. At a later date France was included in the occupation of Germany and the administration of greater Berlin. The agreement provided that Germany was to be divided into four zones of occupation and established a special Berlin area which was to be under the joint occupation of the four Powers. Greater Berlin was to be administered by an inter-allied

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governing authority (Kommandatura) consisting of commandants of the four Powers. United States forces entered Berlin on July 1, 1945 in accordance with this agreement. General arrangements were made for use by the Western Powers of specific roads, rail lines and air corridors for the purpose of exercising their right of access to Berlin. A variety of working practices developed with respect to the exercise by the Western Powers of their right of access.

In the Spring of 1948, the Soviets withdrew from the quadripartite administration of Berlin, and the Berlin blockade commenced. On the termination of the blockade, the Soviets specifically re-instated the previously existing procedures under which the forces of the three Powers ~~exercised their right of~~ access to Berlin.

The right of the three Powers to occupy Berlin and to have access to the city cannot be altered by any action on the part of the Soviets. Each power has the same standing to be an occupier of Berlin. In practice, the three Western Powers occupy the Western Sectors of Berlin without attempting to exercise any rights in East Berlin. The normal day-to-day administration of West Berlin is in the hands of a duly elected West Berlin legislature and elected officials. The Western Powers have not, however, relinquished any of their rights. They have refused to deal with any authority except the Soviet Union as concerns the exercise of their rights.

Present Status of Berlin

The relationship between West Berlin and the Federal Republic is not in violation of basic agreements because the British, the French, and we have been very careful to preserve the essential elements of the separate status of the city. When the Federal Republic was created in 1948-49, incorporation of West Berlin was prevented by the Allies in order to deny the Soviets grounds for denunciation of the agreement providing for the quadripartite status of Berlin. In their letter of May 12, 1949, the three Military Governors stipulated that "Berlin may not be accorded voting membership in the Bundestag or Bundesrat nor be governed by the Federation." On May 14, 1949, the Allied Kommandatura issued a Statement of Principles stating "the Military Governors have not been able, because of the special circumstances of Berlin, to agree at this time that Berlin should be included as a Land in the initial organization of the German Federal Republic." The essential elements which distinguish Berlin from a Land of the Federal Republic are:

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1) the continued presence of the Allied Forces as occupiers rather than on a contractual basis; 2) the real, if quietly exercised, supreme authority of the Allied Kommandatura; 3) the continuation in force of a body of occupation legislation; 4) the control of the Berlin police by the Allied Commandants; 5) the vestiges of Four-Power arrangements for Berlin, e.g., those governing access; 6) the exclusion of Berlin from the Federal Republic's defense organization, and the reservation of the security of the city to the Allies; 7) the limitations on Berlin's participation in the Federal Parliament; 8) the special procedures for the application of Federal legislation and treaties, and the limitation on the independence of Federal agencies in Berlin; 9) the lack of Federal Constitutional Court jurisdiction over Berlin; and 10) the special financial arrangements between Berlin and the Federal Republic.

The essential difference between the present relationship between the USSR and the so-called "German Democratic Republic" and that that would exist upon the conclusion of the so-called "separate peace treaty" involves US-UK-French access to Berlin. The Soviets declared the "GDR" to be "sovereign" in 1954, and in September 1955 the USSR and the "GDR" concluded agreements confirming the "GDR's sovereignty". A very important part of these agreements was an exchange of letters between Zorin of the USSR and Bolz of the "GDR" which provided that the Soviets would continue to exercise their functions with respect to US-UK-French access to Berlin until another agreement was concluded. The Soviets have continued up to the present to control our access to Berlin. However, they have made it quite plain that the really important new element to be provided by the "separate peace treaty" will be "GDR" control over US-UK-French access to Berlin.

How a Soviet-East German Peace Treaty Would Violate Our Rights in Berlin

The Soviet Union has from the first made clear its intent that a Soviet "peace treaty" with East Germany would have the effect of bringing to an end the occupation status of Berlin and transferring to East Germany the functions hitherto performed by the USSR in connection with that status. This would, of course, include Allied access to Berlin. In its note of November 27, 1958, which was the first definitive statement on the subject, the Soviet Union stated it regarded as null and void the Protocol of September 12, 1944, which was the basic agreement establishing the occupation status. It was made clear that with the signing of a "separate peace treaty", the Four-Power status of the City would cease to exist, and Western arrangements for access would have to be made

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with East Germany. Since that time these themes have been frequently reiterated publicly by Khrushchev and Ulbricht, and Khrushchev once told President Eisenhower directly that a peace treaty with East Germany would necessarily affect Allied access rights.

Thus, since our rights in Berlin flow from our position as conquerors and participants with the Soviet Union and others in a joint occupation of the city, the unilateral action of the Soviets to terminate the occupation status and divest themselves of responsibilities which they acquired as part of the joint undertaking is clearly a violation of those rights.

Why the United States does not Recognize the So-called "German Democratic Republic"

The fundamental reason why the United States, its allies and the uncommitted nations have refused to recognize the so-called "GDR" is that there is in actuality no such country. The area called the "GDR" is in reality only one of the several occupation zones of Germany, the Soviet Zone and remains an inseparable part of Germany. According to the criteria of history, culture, language and tradition, according to the desire of the population, and according to international agreements, Germany remains a single nation. The so-called "GDR" is an artificial regime which the USSR has created and imposed upon its zone of occupation because it has been unable to dominate all of Germany and thus desires, by establishing what it calls a "second German state", to assure Communist domination in at least East Germany.

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Finally, should the United States recognize the "GDR", it would be the first country outside the Communist bloc and Yugoslavia to do so. Even the neutral and uncommitted nations have refused to recognize the regime. Recognition of the GDR by the United States in the face of the opposition of the Federal Republic would jeopardize our entire post-war policy of integrating Germany with the West and utilizing its dynamism and military potential as an essential component of NATO.

5/29/61.

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